

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

Frank Staples, et al., *
*
Plaintiffs, *
v. * Civil No. 1:24-cv-00331-LM-TSM
*
Christopher Sununu, Governor, et al., *
*
Defendants *
*

PARTIAL OBJECTION TO MOTION FOR SUBSTITUTION

The New Hampshire Governor and the New Hampshire Attorney General submit the above-captioned pleading, stating in support thereof as follows:

1. Plaintiff filed various pleadings on February 12, 2025, including ECF Doc. No. 20 (Motion for Substitution under Rule 25(d)).
2. As a preliminary matter, Defendants note that the Plaintiffs' Complaint purports to raise least some claims against Governor Sununu in both his official and individual capacities. *See* Compl. at 2.
3. As this Court knows, the State Defendants have filed a Motion to Dismiss, which is presently pending before this Court. *See* ECF Doc. No. 22.
4. Of course, in the event the pending claims are dismissed, Plaintiffs' Motion for Substitution will become moot.
5. Regardless, Defendants submit the within Partial Objection in order to preserve their rights.

6. The Federal Rule of Civil Procedure regarding substitution states in part:

An action does not abate when a public officer *who is a party in an official capacity* dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party. Later proceedings should be in the substituted party's name, but any misnomer not affecting the parties' substantial rights must be disregarded. The court may order substitution at any time, but the absence of such an order does not affect the substitution.

FRCP 25(d) (emphasis added).

7. Accordingly, Plaintiffs have no objection to Governor Ayotte being substituted for Governor Sununu for the official-capacity claims against the Governor.
8. However, to the extent the Plaintiffs seek to substitute Governor Ayotte as a defendant for their individual-capacity claims against Governor Sununu, Defendants object.
9. While Defendants maintain that the Plaintiffs' allegations against Governor Sununu are insufficiently pled, to the extent any individual-capacity claims were alleged, they would necessarily be rooted in Governor Sununu's alleged conduct in his individual capacity, rather than conduct within the scope of his office.
10. For this reason, and because such substitution is not authorized under FRCP 25(d), any request for substitution on the individual-capacity claims against the Governor must fail.

WHEREFORE, Defendants respectfully requests that this Honorable Court:

- A. Note the within Partial Objection;
- B. Deny Plaintiffs' Motion for Substitution to the extent it requests substitution on the individual-capacity claims against Governor Sununu; and
- C. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Governor Chris Sununu, and
Attorney General John Formella

By their attorney,

THE OFFICE OF THE ATTORNEY GENERAL

Dated: February 21, 2025

/s/ Shawna Bentley
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent this day by first class mail to each of the plaintiffs at the address listed in the CM/ECF docket.

/s/ Shawna Bentley
Shawna Bentley